

LEWIS C. L. SMITH.

MAY 31, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. BROWNLOW, from the Committee on Military Affairs, submitted the following

## REPORT.

[To accompany S. 3441.]

The Committee on Military Affairs, to whom was referred the bill (S. 3441) removing the charge of desertion from the record of Lewis C. L. Smith, having had the same under consideration, report it back to the House with the recommendation that it do pass with the following amendment:

*Provided*, That no pay, bounty, or other emoluments shall become due or payable by virtue of the passage of this act.

The facts in the case are shown in the Senate report, which is as follows:

The Committee on Military Affairs, to whom was referred the bill (S. 3441) to authorize the Secretary of War to remove the charge of desertion from the record of Lewis C. L. Smith, Company D, First Delaware Infantry, and to issue to him an honorable discharge, beg leave to submit the following report:

The Chief of the Record and Pension Office of the War Department reports in this case as follows:

"It is shown by the records that Lewis C. L. Smith was enrolled March 25, 1864, and mustered into service March 26, 1864, as a private in Company D, First Regiment Delaware Infantry Volunteers, to serve three years. He appears to have served faithfully to December 31, 1864, when he is reported absent without leave. He is reported as having deserted January 16, 1865, never thereafter returning to his command, which remained in service until July 12, 1865."

Applying for the removal of the charge of desertion the soldier, in an unsworn statement, dated June 16, 1892, declared as follows:

"On the 27th day of August, A. D. 1864, I was examined by Dr. Maull, Dr. McCollough, and Dr. Bunnaste, medical director Second Army Corps, for discharge, and same day turned over to Captain Yardly all equipments.

"While awaiting discharge after said examination I remained with my regiment until the 27th day of October, A. D. 1864, on which day Maj. W. F. Smith, of First Delaware Infantry, United States Volunteers, my brother, was mortally wounded at Gravelly Run, Virginia, when I was detailed by said Drs. McCollough and Burr to attend to the major. I remained with him in the service hospitals about Petersburg until he died, on the 6th day of November, A. D. 1864, and left City Point, Va., on November 8, 1864, with his body for his home, Dover, Del. After arriving home my mother, Mrs. Sarah A. Smith, refused to let me return to my regiment, and I remained in Dover, Del., until after the close of the war."

Hon. R. R. Kenney, United States Senator, submitted to this Department, January 18, 1898, a paper, of which the following is a copy:

HEADQUARTERS SECOND DIVISION HOSPITAL, IN FIELD,  
*Near Petersburg, November 7, 1864.*

Lieut. Col. P. S. BOWERS, *A. A. G.*:

Maj. William F. Smith, of the First Delaware Volunteers, died last evening at our division hospital. His brother, Lewis C. L. Smith, a private in the same regiment, and for some time past upon detail at the above hospital, is getting the major's body embalmed, and wishes to leave to go home with it for burial, at Dover, Kent County, Del. The regiment was ordered home last week to the election, and but for his brother, who was wounded in the battle at Hatcher's Run, and has since been at the hospital, Lewis would have gone home with the regiment. He desires to go by way of Fortress Monroe and Baltimore.

WM. J. BURN,  
*Acting Staff Surgeon, U. S. A.,  
On duty at Second Division, Second Army Corps, Hospital.*

Ten days' leave is asked for Private Lewis C. L. Smith, or an order to report to his regiment in Dover, Del.

The paper above quoted bears indorsements as follows:

[First indorsement.]

HEADQUARTERS ARMIES UNITED STATES,  
*City Point, Va., November 7, 1864.*

Private Lewis C. L. Smith, First Delaware Regiment, will immediately proceed to join his regiment, now at Dover, Del.

The Quartermaster's Department will furnish necessary transportation for this purpose.

Private Smith has permission to take with him to Dover the remains of his brother, Maj. William F. Smith, of said regiment.

By command of Lieutenant-General Grant:

T. I. BURNS,  
*Assistant Adjutant-General.*

[Second indorsement.]

OFFICE OF CHIEF QUARTERMASTER,  
ARMIES OPERATING AGAINST RICHMOND,  
*City Point, Va., November 8, 1864.*

Respectfully referred to Lieut. Col. G. S. Bradley, acting chief quartermaster depot, City Point, who will furnish the transportation required.

By command of Brigadier-General Ingalls:

FLA. W. GRUGAN,  
*Lieutenant and Aid-de-Camp.*

The application for removal of the charge of desertion in this case has been denied, and now stands denied, on the ground that it has not been established that the soldier was prevented from completing his term of enlistment by disability contracted in the line of duty, and because the case does not come within any of the other provisions of the act approved March 2, 1889, which is the only law now in force governing the subject of removal of charges of desertion.

Respectfully submitted.

F. C. AINSWORTH,  
*Colonel, United States Army, Chief Record and Pension Office.*

RECORD AND PENSION OFFICE,  
*War Department, January 29, 1898.*

THE SECRETARY OF WAR.

It will be seen from the War Department report that, according to the military record, Smith was a deserter. He was reported by his company commander as absent without leave, and, failing to return to his command, he was finally dropped from the rolls as a deserter. There was nothing else to do. And yet it is doubtful if the charge of desertion represents the real facts in the case. It is doubtful if the soldier was in fact a deserter. The military crime of desertion is defined by the Judge-Advocate-General of the Army as an "unauthorized absenting of himself from the military service, by an officer or soldier, with the intention of not return-

ing." Is such an intent evident in this case? Your committee are of the opinion that, considering the record and the facts presented, the intent to desert the service is not only not manifest, but it is apparent that the failure of the soldier to return to his command was due to quite another cause, and one over which he had no control.

It is shown by the military records that this soldier was 18 years of age at the date of his enlistment. It was probably necessary that if the boy was to be enlisted at all he should be recorded as within the military age, of which 18 years was the minimum. But it is shown by the evidence now before your committee that Smith was less than 15 years of age at the date of his enlistment, having, as shown by the parish record of his baptism, been born August 5, 1849. The enlistment of this boy was evidently an intentional violation of the law and the Army Regulations. His brother was an officer of the same regiment, and the boy was taken into service with him. When the older brother, then major of the regiment, was wounded in battle the younger brother was detailed to take care of him, and remained with him until his death, when he accompanied the remains to his home at Dover, under authority of Lieutenant-General Grant, then in command at City Point. In view of his youth and the melancholy circumstances attending his return to his home, it is not surprising that he failed to rejoin his command, especially when it is considered that he had been examined for discharge before leaving the field and that his mother interposed her authority to prevent his return to duty.

To a youth of his age, who was in the military service in violation of law, the command of his mother to remain at home would naturally take precedence of the claims of his illegal enlistment; and it is significant that, though technically a deserter, he was not molested by the military authorities. It evidently would have been an easy matter for the provost marshal at Dover to have caused his arrest and return to the service or his trial by court-martial for the crime of desertion. From the fact that he was not arrested as a deserter or tried by court-martial on the charge of desertion it is evident that the military authorities had no desire either to punish him or to return him to the ranks. The mother had given one son to the service of his country, and it would seem that she was entitled to the custody of the youth who had returned to her.

Your committee are of the opinion that this youthful soldier was not a willful or intentional deserter, and therefore recommend the adoption of the pending bill for his relief, with an amendment, in line 7, adding the words "of Dover, Delaware, as of date of January sixteenth, eighteen hundred and sixty-five."

